ANTIGUA AND BARBUDA

IN THE COURT OF APPEAL

CRIMINAL APPEAL No. 6 of 2000

BETWEEN:

FITZROY JARVIS

Appellant

and

THE QUEEN

Respondent

Before:

The Hon. Sir Dennis Byron — Chief Justice
The Hon. Mr. Satrohan Singh — Justice of Appeal
The Hon. Mr. Albert Redhead — Justice of Appeal

Appearances:

Mr. Dane Hamilton for the Appellant and
Mr. Anthony Astaphan S.C. for the Respondents

2001 : November, 5
2002: February 11.

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[1] REDHEAD J.A. The deceased, Lindie Scotland, according to the evidence, met his death at 9 Morris Looby Estate, Antigua, between 7.45p.m and 8.30p.m on Sunday 7th June, 1998.

[2] The appellant was charged with the murder of Lindie Scotland.

[3] At his trial, for the murder of the deceased, the evidence let by the prosecution against the appellant was mainly given by Sylvester Payne. According to this witness, Lindie Scotland, the deceased, the appellant and he, Sylvester Payne, planted butternuts and melons on a farm in Morris Looby Estate.

[4] Sylvester Payne testified that the appellant had stolen butternuts from the deceased's garden.

[5] On 7th June, 1998 about 9.00 p.m., Sylvester Payne said on oath, both he and the deceased drove towards the appellant's residence. While driving he saw the appellant driving a white pick-up. The deceased stopped his motor car and spoke to the appellant who directed them to an area at Morris Looby Estate.

[6] Sylvester Payne testified that he and the appellant drove to Morris Looby. He said that the appellant drove up about 15 minutes latter in his white Isuzu pick-up with the headlights off. He testified that it was a moonlight night.

[7] This witness told the jury on oath that while the appellant was driving, his pick-up struck a stone and as a result the 'oil pan' of the pick-up was damaged. The appellant, the deceased and himself were examining the pick-up with the aid of the appellant's flashlight. Sylvester Payne testified that:

> "When we reached the area, [as directed by the appellant] Fitzoy Jarvis wanted Scotland [the deceased] to park his car in a certain way and Scotland parked the car accordingly. The area was bushy. He made Scotland park the car facing the bush. Fitzroy Jarvis parked his pick-up along side the car so that it could not move."

[8] This witness testified that after the deceased parked his vehicle. The appellant locked his vehicle and walked with his flashlight. Sylvester Payne told the court the deceased, the appellant and him were walking into the bush, the appellant was in front, the deceased was behind the appellant and he was following. The appellant then said " Pelle Wait". Sylvester Payne is known as Pelle

[9] Sylvester Payne said he then stood up where the car was parked walking around. He said about five minutes after the appellant and the deceased had gone into the bushes, the deceased shouted:-

"Obal Murder", [This witness is also called Obal]. He said after the deceased shouted Obal murder he ran to Bethasda Village and went to the brother of the deceased, Edwin Scotland's residence.

[10] This witness said he ran leaving his shoes and shirt behind. He said when he got to Edwin Scotland 's house he was in "shock". He sat down before he was able to tell Edwin Scotland anything.

[12] He said that he and Edwin Scotland went to his [Sylvester Payne's] stepfather who has a pick-up they got some other people from the village and he, Payne, took to their area.

[13] When he got to Morris Looby the appellant's pick-up was no longer parked there but the deceased's car was still parked where he had left it.

[14] This witness testified that he pointed out to one Gevan Archibald the direction in which he saw the appellant and the deceased go. He saw Archibald went into the bushes and fell over the body of the deceased. Payne said that he was still afraid to go into the bushes but he saw the body when the police came. He also saw the body when the doctor came. He said the body was all chopped up, "chopped up like how you chop up meat."

[15] This witness also testified that:

> "[The appellant's] left hand side had something wrapped up under his jacket before Jarvis went into the bush but I do not know what it was"

[16] Sylvester Payne said in cross-examination that the deceased and appellant went into the bushes to "settle a butternut business." He denied several times under cross-examination that "the plan was to go into the bushes at Morris Looby to collect weed."

[17] The Pathologist, Dr. Gangadharam Duvvari, said on oath that on examination of the body he found 10 external injuries. He listed them as follows:

[1] Circular wound 4cms in diameter on the right side of the abdomen

[2] Wound 5 x 2 cms with irregular margins exposing the muscles

[3] Wound 4 cms x 1 cm in the epigastric area

[4] Elliptical wound 6 cms x 2 cms left side of chest

[5] Horizontal wound 10 cms x 3 cms from the midline on the right side of the chest. This wound was 16 cms deep.

[6] Wound 3 cms x 1cm on the left side of the epigastrium 7cm from the midline

[7] Lacerated wound 10 x 6 cms on the left shoulder.

[8] Chop wound 11 x 3 cms on the left side of the chest

[9] Chop wound 5 x 21/2 inches on the left palm

[10] Lacerated wound 2 x 1 cms, base of the left thumb

[18] The pathologist also testified that he examined the liver which showed an incised wound measuring 3cms long.

[19] The doctor gave his opinion that the cause of death was due to shock and hemorrhage resulting from multiple stab wounds to the chest and abdomen caused by a sharp cutting weapon with a severe degree of force.

[20] The case against the appellant was based mainly on circumstantial evidence.

[21] The appellant gave a statement to the police under caution. The statement was in the form of a questions and answers. In that statement he said inter alia, that on the night in question the deceased asked him to pick up some herb for him from some “feller” from Parham. He said that he met the deceased and Pelle in the Cochrane area. In that statement the appellant said the deceased told him “let us go” and they started walking in a southerly direction. He said that when they got about two hundred and “something” feet away from where their vehicles were parked he realized “a darkness in front of them. He realized that it was a dark Suzuki Jeep without registration.” He asked the deceased whose vehicle it was and he said the deceased told him that it was some ‘fellars’ from Purham. The appellant said in his statement that he and the deceased walked passed the jeep but was unable to see if there was anyone in the jeep because according to the

appellant the windows of the jeep were "darkened". The deceased asked him if he had any weapon or a flashlight. He told him no. The appellant said he then ran back to the pickup. He returned to where the deceased was, he caught up with him. He then told the deceased that he was, not going any further into the bush. The appellant said that he then heard a voice which he did not recognize saying "where is the man?" He then heard an argument. The appellant then said in his statement:

> " I hear Lindie Scotland voice "Ras you cut me, me dead now" and some time I hear like a running and I run away from where I was standing and then I realize somebody was in the jeep because the light come on when I was going to the pick-up. I got into the vehicle and drove off."

[22] The appellant was convicted of the offence of murder and was sentenced to death by hanging.

[23] He now appeals to this court against his conviction.

[24] Eight grounds of appeal were filed on behalf of the appellant. Under ground 1 it was contended on behalf of the appellant that [1] the directions of the learned trial judge was wholly inadequate in that:-

(i) It was merely a summary and/or precise of the examination-in-chief of the prosecution witnesses.

(ii) No attempt was made to assess this evidence in light of the cross-examination.

(iii) The crucial issues at the trial was not highlighted or analysed by the trial judge nor was the jury directed as to what approach they should adopt in considering this evidence in arriving at a decision.

[25] Learned Senior Counsel for the respondent argued that the learned trial judge dealt adequately with all the relevant issues and evidence including the evidence of the appellant. His Summing up contained all the essential elements of a proper Summing up and was most fair to the appellant, according to Mr. Astaphan.

[26] Under ground 2:

It was contended that the case of the crown as revealed by the evidence adduced was entirely circumstantial and apart from general directions as to what is circumstantial evidence, at no time throughout the entire summary did the learned trial judge identify evidence which was circumstantial and instruct the jury as to the proper approach and treatment thereof and what inference, if any, could be drawn thereupon."

[27] Grounds 1 and 2 can be conveniently dealt with together:

The learned trial judge directed the jury on circumstantial evidence. At pages 81-82 of the record the learned trial judge said, inter alia:

> ".....on the other hand where there is no eye witness to the crime there may nevertheless be circumstances which point to the guilt of the accused, and hence we say circumstantial evidence. However circumstantial evidence must be very closely and narrowly examined. The circumstances must be such that they point conclusively to the guilt of the accused because, ladies and gentlemen you are entitled to draw reasonable inferences from the evidence and where he evidence is such that you can draw more than one inferences you must draw the one which is favourable to the accused……. circumstantial evidence is like a rope consisting of several strands of chord where one strand might be insufficient to sustain the weight but when all the strands are woven together you have an unbreakable rope. Similarly there may be a combination of circumstances no one of which would lead to a conviction but when taken together it may create a strong conclusion of guilt"

[28] The learned trial judge also pointed out the circumstantial evidence to the jury at pages 97-101 of the record; where he reminded them that the appellant and the deceased went into the bushes together that night. The appellant in his testimony on oath said it was Scot 1; the deceased, who told Sylvester Payne to wait by the car while he and the deceased headed in a southerly direction. While walking into the bushes, the deceased said to him:-

> "you see them man there while you pay them, they will kill anybody."

[29] He, the appellant, then ran back to the pick-up for a cutlass. The appellant said that on his return he spoke with the deceased he then heard voices:-

> "That you cut me, me dead now me dead now."

[30] He began to run and lost both of his shoes, his tam, his hat and his glasses.

[31] He got into his pickup left the area at about 9.00 p.m. for work at Bethesda, a journey which took him about 45 minutes. He was due to begin work at 11.00 p.m.

[32] The appellant explained to the jury under oath that he was afraid and sensed danger when he heard, "Ras you cut me, me dead now" and he ran from the danger but it did not occur to him to contact any member of Pelle's or Scotland's family about what happened on that night because he was not certain what had happened. He gave the same reason for not going to the police.

[33] He said in the caution statement to the police that he used to have a military style jacket "a couple weeks ago" (before the statement). He also said in that statement that he threw it away "in some garbage thing" either up All Saints Road or sometime in the night "about a month ago."

[34] Sylvester Payne testified that the appellant was wearing a camouflage jacket on the night of the incident.

[35] Under cross-examination he denied that he was wearing a camouflage jacket on the night of 7th June. He said that both Kathleen Tuitt, his girlfriend and Pelle were telling lies on him.

[36] Finally it was pointed out to the jury the evidence of Assistant Superintendent Albert Smith who testified that on the 9th of June he accompanied the accused to Morris Looby Estate and when he pointed out the area where they found the items including his left side of shoe, his glasses, a black tam and the other items the grey tam, two shorts, the accused told them whilst running he lost his tam, glasses and his shoe.

[37] A.S.P Smith had also testified that:

> "We carried out an extensive search of the area where the body was found and surrounding area and during that search following:-
> (a) footpath with what appeared to be blood for a distance of about 398 feet from where the deceased body was found to the vicinity of a mango tree and a large rock. About 10 feet from the tree and the rock I noticed on the ground a

grey coloured tam with red, yellow and green stripes. Stuffed inside of that tam was a blue and grey short pants and a maroon short pants. Also lying on that hat, the tam, a red plastic band. Next to that 8 inches away I noticed a pair of tinted eye glasses. Just west of that pair of glasses I saw a black tam and also west of black tam was a left side shoe (brown).

[38] According to A.S.P. Smith the appellant admitted that:
"I lost my hat, my glasses and my shoe while I was running"
Smith said in evidence that he then said to the appellant, that the grey tam was also found in that area.
The grey tam was identified as that of Lindie Scotland, the deceased. The appellant then replied:-
"Maybe he ran through the same place that I ran"

[37] Mr. Hamilton, learned Counsel for the appellant submitted that:-
On such a review of the primary facts the jury ought to have been directed that circumstantial evidence may sometimes be conclusive, but it must be narrowly examined if only because evidence of this kind may be fabricated to cast suspicion on another. While perhaps, in my view, it would have been more elegant for the learned trial judge to draw to the attention of the jury immediately after he had outlined the law on circumstantial evidence the bits and pieces of evidence on which the prosecution rely. However, the learned trial judge did point out the evidence and he explained the law on circumstantial evidence.

[38] In Henry v. The State [1986] 40 WIR 312 –
The appellant was convicted of murder and sentenced to death. On his appeal, the appellant challenged, inter alia, the adequacy of the trial judge's summing-up in relation to circumstantial evidence.

[39] At page 326 Bernard C.J. said

> "A summing-up must be looked at in light of the particular facts and circumstances and against the background of the duty of the prosecution to establish guilt beyond all reasonable doubt. Juries and (if we may be presumptions to say so) modern day juries are not to be credited with a lack of understanding of and/or inability to grapple with issues without a legalistic commentary by the trial judge. In this regard we endorse the observation of Lord Goddard C.J. Kritz (1949) 2 ALL ER. 406 to the effect that" juries are not fools as they are often thought to be" what justice requires, indeed what is absolute, is that the trial judge in his directions should make it clear in abundantly plain, unambiguous and intelligible language what are the elements of the charge, what are the issues in relation to the charge, and upon whom the onus and standard of proof lie in relation thereto. A case based on circumstantial evidence is in no way different….."

[40] In the instant case the learned trial judge gave the jury adequate directions on the burden and standard of proof. He also told the jury of the presumption of innocence and to be cautious with circumstantial evidence. He warned them repeatedly (about 10 times) that they had to be sure of the appellant's guilt before they can convict him.

[41] In the State v Sooraj Evans (1975) 23WIR 189

The appellant was tried for and convicted of the murder of Alfred Rodrigues. The evidence led against him at his trial was mainly circumstantial. He appealed to the Guyana Court of Appeal. The point raised for consideration on appeal was whether further or special directions on circumstantial evidence were still necessary, notwithstanding a general direction on the standard of proof had already been given, namely, that it was proof beyond reasonable doubt.

[42] Persaud J.A held that:

> "whatever formula is used in directing juries on circumstantial evidence, it amounts to no more that telling them the prosecution must prove the guilt of the prisoner beyond reasonable doubt, for if a reasonable hypothesis arises from the evidence which the jury accepts as being consistent with the prisoner's innocence, the prosecution will not have satisfied the degree of proof required to bring home the guilt of the prisoner.
>
> [ii] that there is no need to give any further or special direction to that portion of the summing-up, as in the subsequent passages, the judge left in no doubt viz that the jury must examine the evidence narrowly, and must be sure of the appellant's guilt before convicting him.
>
> [iv] that in cases of circumstantial evidence, it would be at least desirable, and certainly helpful, to tell juries that to be satisfied of the guilt of the accused beyond reasonable doubt, they must be sure that his guilt is the only reasonable explanation of the true facts.
>
> [v] that even if a special direction is not (sic) compulsory, the summing up on the whole was quite adequate and it was impossible to hold that the verdict was unreasonable and could not be supported having regard to the evidence.
>
> [vi] that the cumulative effect of the judge's directions was to make it plain that guilt had to be the only reasonable hypothesis or explanation of the facts accepted as true which is what a "special direction" really means."

[43] In the case at bar the learned trial judge explained the law on circumstantial evidence adequately, he referred to the evidence. He told the jury (P.81 of the record) the evidence

must be very closely and narrowly examined and that the circumstances must be such that they point conclusively to the guilt of the appellant.

[44] I turn now to consider ground 3 in which it is alleged that the prosecution was alleging that the accused was telling lies. The learned trial judge merely gave a general "Lucas" (See R. Lucas 1981 2 ALL ER 1008) direction and failed to identify what lies, if any, the prosecution was relying on to establish the guilt of the appellant and what treatment was necessary therefore. Further he failed to access the appellant's evidence with the question and answer interview of 9th June, 2000.

[45] Learned Counsel for the respondent, Mr. Astaphan, submitted that it is clear from the learned trial judge's summing up that, when, after reviewing the appellant's evidence the jury would have understood that the judge meant that all of the appellant's evidence in so far as he sought to deny the charge and challenged the veracity of the prosecution witnesses was a pack of lies. Mr. Astaphan contended that there could, therefore, not have been any obligation on the judge to identify any one particular or a series of particular lies.

[46] Mr. Astaphan also submitted that in the circumstances of this case, the judge's direction, on the prosecution's suggestion that the appellant's evidence was a pack of lies and the manner in which the jury ought to consider the appellant's evidence, if he felt that he had lied, were proper. Learned Senior Counsel further argued that the fact that the prosecution was not relying on any lies told by the appellant to establish his guilt, but rather the prosecution was relying on the evidence of Sylvester Payne and the other prosecution witnesses, and the irresistible inferences which so readily and clearly arose therefrom.

[47] In R v Sharp [1993] 3ALL ER.255-

It was held, inter alia:

> "Except where lies were relied on as corroboration (see R. v Lucas supra) or as confirmation of identification evidence, it was not as a matter of law incumbent on a judge to give the usual direction as to the significance of he lies told by he defendant, to the effect (a) that the jury was entitled to ask themselves why the defendant had lied to the police (b) that the mere fact that the defendant had lied

> was not to be taken as evidence of guilt (since it depended on the motive for the lie) (c) that the jury ought to ignore the lies if they thought there was or might be some innocent explanation for them, but (d) that the lies were evidence going to proof of guilt if the jury were sure that they were relevant to the allegation made against the defendant and were not prompted by any innocent motive……."

[48] In the case at bar I agree with the submission of learned senior Counsel that the prosecution was not relying on the appellant's lies to establish his guilt. Neither were the lies relied on as corroboration or as confirmation of identification evidence, yet the learned trial judge gave a "Lucas" direction.

[49] This was a case where the appellant's version of events as opposed to the witness Sylvester Payne's version of events and also the other prosecution witnesses; the jury, as the tribunal of fact, had to determine whose version was credible and what facts to believe; by their verdict they obviously believed the prosecution's version. This ground of appeal therefore fails.

[50] I turn now to ground 4 of he appeal, that is the learned trial judge failed to adequately or at all put the defence of the appellant.

[51] The appellant's defence was that although he was on the scene on the night in question with the deceased, he did not kill the deceased. In his statement to the police and his evidence on oath before the jury he maintained that some person or persons who were in another vehicle attacked and killed the deceased.

[52] The police who carried out the investigations into the murder testified that there was no evidence of any other vehicle on the scene other than that of the appellant's and the deceased.

[53] The learned trial judge when he dealt with the defence of the appellant he began by telling the jury.

> "In his examination-in-chief the accused repeatedly said that he did not murder Lindie Scotland nor did he kill him."

[54] These words to my mind are powerful reminders to the jury of what the defence was and that was the defence of the appellant. When one studies the summation of the learned trial judge, I have no doubt in my mind that he has adequately put the defence of the appellant at pages 98 –104 of the record.

[55] The trial judge went through all the salient aspects of the appellant's evidence, reminded them of the important aspects of the defence and ended (at page 104) by reminding the jury that the burden was on the prosecution "to prove its allegation in the charge." And that burden never shifts.

[56] Finally the learned trial judge left this with the jury:

> "Therefore if you have any reasonable doubt as to whether the prosecution has proven its case then you would have to find the accused not guilty. I must further direct you, that if in your deliberation you take up all the evidence and consider it carefully and consider the questions raised in the case, for the defence does not have to prove or disprove anything the burden rests upon the prosecution to prove the guilt of the accused beyond reasonable doubt, that is you fell sure that the accused is guilty as charged."

[57] Having regard to the foregoing, it is my view, that it is without reason or justification to allege that the learned trial judge failed adequately to put the defence of the appellant and that his Summation was merely a summary of the appellant's evidence and cross examination.

[58] Under ground 5 the appellant alleged that the learned trial judge misdirected the jury:-.

(i) to consider hearsay material as probative of the appellant's guilt which material was incorrect and equivocal

(ii) as to the appellant's presence on the scene of the murder when pictures were taken by the witness, Julian Harley on 11th June, 1998.

[59] Unfortunately it was not identified what hearsay material was let in as probative of the appellant's guilt.

[60] Under ground 5(2) (ii) the allegation is that the learned trial judge misdirected the jury as to the appellant's presence on the scene of the murder when pictures were taken by witness, Julian Harley on the 11th June, 1998.

[61] There is no doubt that the appellant was on the scene or at lest near to scene of the murder he himself said so. He pointed out to the police where he was. Sylvester Payne showed the police where he, Sylvester Payne, was and where the appellant and the deceased went into the bushes. The police photographer, Julian Harley took photographs of the general area which tended to show where the appellant was on the scene. The photographs also showed where the dead body was. The appellant's glasses, his left shoe, his tam in proximity to the body. The photographs also revealed that some of the appellant's belongings were found in the same area as that of the deceased's. This to my mind is cogent evidence for the consideration of the jury in determining the appellant's guilt or innocence. This to my view could never be a misdirection or hearsay material. Ground 5 of the appeal is without merit and is therefore dismissed.

[62] The appellant complains under ground 6 that the learned trial judge wrongly cross examined him in tandem with the Director of Public Prosecutions. The appellant has sworn an affidavit in support of this ground.

[63] Learned Senior Counsel for he respondent in his submission contended that the affidavit evidence of the appellant does not reveal sufficient evidence which can support or sustain the allegation of the appellant that he was cross-examined in tandem with the Director of Public Prosecutions in a manner prejudical or suggestive of his guilt. (my emphasis)

[64] The record does not reveal either that the appellant was cross examined by the learned trial judge in tandem with the Director of Public Prosecutions. One does not know what questions or how many questions were asked by the learned trial judge. Even if the learned trial judge asked questions of the appellant. He is entitled to do so. As long as he does not descend into the arena. As Bernard C.J. said in-

[65] Henry v The State 40 WIR 212 at page 338-

> "A trial judge is not a robot. He has a role to play. He has a duty to assist the jury, and this is particularly so in a long and complicated intricate or complicated case. Such as was the case here. Thus, provided that he does not descend into the arena he may ask questions of any witness if in his view it can throw light on or clear up any matter for the determination of the jury."

[66] Learned Counsel, Mr. Hamilton referred us to:

Donald Walter Matthews
Royston Maurice Matthews
v
The Queen 7 CAR 23

The headnote reads:

> "In considering the propriety relating to the questioning by a judge of witnesses during criminal trial the following principles should be considered – (1) while a large number of interruptions must put the Court of Appeal on notice of the possibility of a denial of justice, mere statistics were not themselves decisive; (2) the critical aspect of the investigation was the quality of the interventions as they related to he attitude of the judge as might be observed by the jury and the effect that the interventions have either on the orderly, proper and lucid deployment of the defendant's case by his advocate or on the efficacy of the attack to be made on the defendant's behalf on vital prosecution witnesses by cross-examination administered by his advocate on his behalf (3) in analysing the overall effect of the interventions, quantity and quality could not be considered in isolation but would react the one on the other. The question which the court on appeal must ultimately ask itself was - might the case for the defendant as presented to the jury over the trial as a whole, including the adducing and testing of evidence, the submission of Counsel and the summing-up of the judge, be such that the jury's verdict might be unsafe? If that was so and there was a possibility of a denial of justice, then the Court of Appeal ought to interfere."

[67] In that case the applicants were convicted with others to commit drug offences. They applied for leave to appeal on the ground, inter alia, that the trial judge excessively interrupted in the cross-examination of crown witnesses and the applicants' own evidence, and that those interruptions had a prejudical effect to render the convictions unsafe. Although the Court of Appeal had concluded, that "in spite of the number of exceptional interventions, the court had been unable to detect any ground for thinking that the convictions of the applicants were not safe, accordingly the applications would be refused."

[68] At page 31 Purchas L.J. said:-

> "In Hamilton three main types of intervention which could give rise to the quashing of a conviction were identified, namely: (1) Those which invite the jury to disbelieve the evidence for the defence which is put to the jury in such strong terms and it cannot be cured by the common formula that the facts are for the jury and that

> they may disregard anything that the judge may have said with which they disagree; (2) Where the interventions have made it really impossible for counsel for the defence to do his or her duty in properly presenting the defence; (3) Where the interventions have had the effect of preventing the prisoner himself from doing himself justice and telling his story in his own way."

[69] None of the above occurred in the instant case.

[70] This ground of appeal is also dismissed.

[71] Grounds 7 and 8 in my view could also be conveniently dealt with together.

[72] Ground 7: That on a whole the entire summing up was unbalanced and failed to deal squarely with the issues raised at the trial.

[73[Ground 8: That the verdict of the jury is unreasonable and cannot be supported by the evidence

[74] In my opinion ground 7 is another way of stating ground 4. As under ground 4 the complaint was that there was a failure of the judge to put the defence adequately or at all. To allege under this ground that the summing up was unbalanced is tantamount to saying that only the prosecution case was put which is in effect alleging that the defence was not put.

[75] Accordingly this ground of appeal has already been disposed of.

[76] I come now finally to ground 8, the last ground of appeal "the verdict of the jury is unreasonable and cannot be supported by the evidence.

[77] The prosecution's case was based on circumstantial evidence. The witness, Sylvester Payne was on the scene with the appellant and the deceased. He testified on oath before the jury and the judge as to the events that occurred that night. The appellant give his version on oath. Crucial to his defence was that there was another vehicle on the scene and the occupants of that vehicle attacked and killed the deceased. The police gave

evidence that having visited and examined the scene there was no evidence of a third vehicle there. The jury visited the locus in quo. There was also the physical evidence of the appellant's glasses, shoe and tam being found in the same spot as that of the deceased.

[78] The jury also had this bit of evidence to consider from Senior Sergeant, Albert Chastanet who said on oath:-

> "We carried out an extensive search of the area where the body was found and surrounding area and during that search following footpath with what appeared to be blood for a distance of 398 feet from the deceased's body was found to [in] the vicinity of a mango tree and the large rock. About 10 feet from that tree and rock I noticed on the ground a grey coloured tam with red, yellow and green colour strips, stuffed inside of that tam was a blue and grey short pants and a maroon pants also lying on that hat, the tam, a red elastic band. Next to that 8 inches away I noticed a pair of tinted eye-glasses. Just west of that pair of glasses I saw a black tam was and left side shoe (brown)."

[79] Finally there was the behavior of the appellant after the incident. He went into the bushes with the deceased and according to his story he must have realized that the deceased was attacked and at least seriously injured, yet he went to work said nothing to anyone that night. The following day said nothing made no report to anyone, made no inquiries of the whereabouts of the deceased. There is no doubt that the jury as a tribunal of fact were left with two alternatives, the appellant on the one hand was saying that he did not kill the deceased but some assailants who attacked and killed him while they were in the bushes. It is quite obvious from the verdict of the jury that they reject the appellant's version and accepted the evidence of the prosecution witnesses especially the testimony of Sylvester Payne. From that evidence the jury was entitled to draw interferences.

[80] For the foregoing reasons this ground of appeal is also dismissed. The appeal is therefore dismissed. The conviction of the appellant is confirmed. The sentence of death imposed

by the learned trial judge is deferred pending an application by learned Counsel for the appellant before the High Court to determine the appropriate sentence in this matter.

Albert J. Redhead
Justice of Appeal

I Concur

Sir Dennis Byron
Chief Justice

I Concur

Satrohan Singh
Justice of Appeal